IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2521 OF 2006

Shri Bimal Singh Kothari .... Petitioner.

V/s

State of Maharashtra & Anr. .... Respondents.

Mr. Benny Joseph i/b Sanjay Undeshi & Co. for the Petitioner.

Mr. Y.M. Nakhwa, APP for the State.

Mr. A.M. Kulkarni for Respondent No.2.

CORAM: V.M. KANADE, J.
DATE : 3rd September, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent No.2.

2. Petitioner takes exception to the order of issuance of process which is passed by the Trial Court on a complaint which is filed under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned Counsel appearing on behalf of the Petitioner that the cheques were drawn from the account of Kothari Global Ltd (VP Account) and he had signed the said cheques as an authorized signatory. It is submitted that the complainant had issued notice to the Petitioner in his personal capacity and had not

issued any notice to the Company. It is submitted that, further, there is no averment in the complaint that the Company was liable under the provisions of section 138 read with section 141 of the Negotiable Instruments Act. He submitted that the said cheques having been issued by him as an authorized signatory of the said Company, no complaint could have been filed without issuing statutory notice to the Company as envisaged under the said Act. He also invited my attention to the provisions of section 138. He submitted that the Petitioner could not be termed as a drawer within the meaning of the provisions of section 138 of the Negotiable Instruments Act and, therefore, the said process which was issued against him was liable to be quashed. In support of the said submission, he relied on the judgment of the learned Single Judge of this Court in A. Chinnaswami Vs. B.G. Company reported in **1997(3) Mh.L.J.335** and he also relied on the judgment of the Supreme Court in Anil Hada Vs. Indian Acrylic Limited reported in **JT 1999 (9) SC 223.**

4. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the Petitioner. In the present case, specific averment has been made by respondent No.2 - complainant in his complaint, stating therein that the Petitioner herein had taken an amount of Rs 8 lakhs from him and when the said amount was demanded, six cheques were issued by the Petitioner which were signed by him. It is the case of the complainant that the Petitioner herein had fraudulently, by misrepresentation, withdrawn the amount of Rs 8 lakhs which was in his account and when this amount was demanded by him, the Petitioner - original accused issued the said

cheques. It can be seen that even the notice which is issued by the respondent No.2 - complainant is in the personal capacity of the Petitioner and not as a Managing Director of the said Company. In view of these facts, therefore, it cannot be said that the provisions of section 138 read with section 141 are not applicable at this stage since the presumption is drawn in respect of a cheque which is issued in favour of the drawee. The said presumption has to be rebutted by leading evidence. The fact situation in the case of A. Chinnaswami (supra) and in the case of Anil Hada (supra) is entirely different and, therefore, the ratio of the said judgments will not apply to the facts of the present case. Here, admittedly, Company is not being prosecuted and, therefore, the ratio of the said judgments will not apply to the facts of the present case.

5. Writ Petition is accordingly dismissed. However, it is clarified that all questions which are raised in this Petition are kept open and the same shall be dealt with and decided by the Trial Court after evidence is adduced by both the parties. Trial court is directed to expedite the hearing of the case and, in any, case dispose of the same within a period of 6 months from today.

6. With the above directions, Writ Petition is disposed of. Ad-interim orders, if any, stand vacated.

(V.M. KANADE, J.)